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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,142	06/01/2001	Wesley H. Verkaart	70869-0072	9169

7590

06/29/2004

Clark & Brody  
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EXAMINER
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HAYES, MICHAEL J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/857,142

Applicant(s)

VERKAART, WESLEY H.

Examiner

Michael J Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4 and 6-10 is/are allowed.
- 6) ☒ Claim(s) 1, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/29/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 recites a plunger free from engagement of structure connected to the handle, but the specification and drawings show a plunger that is connected to structure that is connected to the handle.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A plunger free from engagement of structure connected to the handle has not been previously described or claimed and is considered new matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by LEE (U. S. Patent No. 5,115,816). Lee discloses an apparatus for holding and operating a syringe comprising a handle transverse to a semi-cylindrical resilient cradle 65 that holds the syringe barrel and an adapter 72.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cordner. Cordner (figs. 1, 3-5), discloses an apparatus for holding one or more syringes including a handle 14 extending transversely to a semi-cylindrical cradle, a clip 80 with spaced front and rear walls for accommodating syringes of different length. The arrangement between the handle and the cradle such that a user's thumb is capable of engaging the syringe plunger.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over FUKUNAGA or WOLF in view of LEE. Fukunaga (figs. 1, 2, 4, 6, 8) and Wolf (figs. 1-5) disclose an apparatus for holding one or more syringes including a handle, cradle, and a clip adapted to engage two plungers for simultaneous movement. The clip can accommodate different lengths because of the gap between the front and rear walls allows at least this variation in length between syringes. Various thickness of the plunger flanges of the different syringes allows for different lengths to fit within the gap of the clip. Neither Fukunaga or Wolf disclose a

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handle to be gripped that extends transversely to the cradle that removably receives the barrel.

Lee discloses a handle to be gripped that extends transversely to a cradle that removably receives a barrel of a syringe to enable the user to operate the syringe with one hand (figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Lee in the apparatus of Fukunaga or Wolf in order to deliver the contents of the syringe assembly with one hand, enabling a secure grip on the syringe.

#### ***Allowable Subject Matter***

Claims 2-4, 6-10 are allowed. The claims are allowed because they recite an apparatus for holding and operating syringes comprising a handle and transverse cradle that holds a syringe barrel and a clip that is capable of engaging the plunger ends of two syringes to connect them for simultaneous movement where the handle has a storage cavity for at least one clip.

#### ***Response to Arguments***

Applicant argues that claim 1 distinguishes over the prior art because it recites a cradle that supports a single barrel, whereas Cordner supports two barrels. The examiner does not agree. Cordner not only discloses a single barrel, but also two barrels, and the disclosure of more than what the claim recites does not negatively affect the rejection.

Applicant argues that Cordner does not allow advancement of the plunger by a user's thumb, but is advanced by a handgrip. The examiner does not agree, noting that a user's thumb could aid in the advancement of the plunger while using the handgrip. Applicant's reliance on

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how the device is used does not distinguish over the art of record. Applicant should recite structure or structural relationships to distinguish over the art of record.

Applicant argues that claim 11 is written in means plus function format and the examiner agrees with respect to the handle. In reciting a “handle means for providing a grip for an operator’s hand and a cradle for receiving the barrel of a single one of said syringes” the means for providing a grip is construed under 35 USC 112(6), but not the cradle. If Applicant desires to recite the means for receiving also under 35 USC 112(6), the examiner suggests language similar to “handle means for providing a grip for an operator’s hand and for receiving the barrel of a single one of said syringes.” In this way the handle means would clearly be recited as performing the functions of providing a grip and receiving a barrel.

Applicant argues that clip means for receiving the plungers of a plurality of syringes and allowing simultaneous operation thereof must read on clips 13 and 14. The examiner agrees and maintains that these clip means are shown in the prior art.

Applicant argues that one of ordinary skill in the art would not be motivated to combine the teachings of Lee with Fukunaga or Wolf because Lee teaches to aspirate fluids. The examiner does not agree because all the prior art is concerned with operating syringe assemblies and one of ordinary skill in the art would know to look at syringes for modifications. The reliance on the teachings of Lee is concerned with holding a syringe. One of ordinary skill in the art would look to aspirating and delivering syringes to solve problems of holding syringes.

Applicants arguments concerning the engagement of two syringe barrels with respect to Lee are not convincing. In showing more than claimed, the prior art still discloses the claimed invention.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler, can be contacted at (703) 308-3552. The fax number for submitting official papers is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh

28 June 2004

A handwritten signature in black ink, appearing to read "M. J. Hayes", with a long horizontal flourish extending to the right.

**MICHAEL J. HAYES**  
**PRIMARY EXAMINER**